

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Danville Division**

LUCINDA SMALL and ANGEL CUNNINGHAM,

Plaintiffs,

v.

VISTA CLINICAL DIAGNOSTICS, LLC,

Defendant

Case No. 4:17-cv-00081

**JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT
AND STIPULATION FOR DISMISSAL WITH PREJUDICE**

Plaintiffs Lucinda Small (“Small”) and Angel Cunningham (“Cunningham”) (Small and Cunningham are referred to collectively as “Plaintiffs”) and Defendant Vista Clinical Diagnostics, LLC (“Vista”), by and through their undersigned counsel, hereby move this Court for approval of the Parties’ Confidential Settlement Agreement and General Release (the “Settlement Agreement”) and dismissal of Plaintiffs’ claims with prejudice. The Parties have engaged in extensive settlement negotiations, and have agreed that the terms reflected in the Settlement Agreement are mutually satisfactory and represent a full and fair relief to Plaintiffs for the claims asserted. The Court’s approval and entry of an order of dismissal with prejudice will consummate the agreement between the Parties.

In support of this Joint Motion, the Parties state as follows:

1. Small commenced this action on November 30, 2017, asserting claims for failure to pay overtime compensation in violation of the Fair Labor Standards Act (“FLSA”), on behalf of herself and others “similarly situated.” Collective Action Compl. & Demand for Jury Trial [ECF 1] (“Original Complaint”).

2. On March 8, 2018, Small amended the Original Complaint, identifying two individuals – Angel Cunningham (“Cunningham”) and another – as additional named plaintiffs. First Am. Collective Action Compl. & Demand for Jury Trial [ECF 17] (“First Amended Complaint”). Like the Original Complaint, the First Amended Complaint asserted claims for failure to pay overtime compensation in violation of the FLSA on behalf of the named plaintiffs and others “similarly situated.”

3. On August 27, 2018, Small and Cunningham filed a Second Amended Complaint and Demand for Jury Trial [ECF 27] (“Second Amended Complaint”), which alleged failure to pay overtime compensation in violation of the FLSA and also asserted a claim for failure to pay minimum wage in violation of the FLSA.

4. The Second Amended Complaint was brought solely on behalf of Small and Cunningham. The other previously named plaintiff was dismissed from the lawsuit and the allegations previously on behalf of others “similarly situated” were removed.

5. A bona fide dispute existed between the Parties, as Plaintiffs claimed entitlement to unpaid minimum wage and overtime, and Vista maintained, among other things, that Plaintiffs were independent contractors not subject to the provisions of the FLSA and that Plaintiffs did not perform services for Vista for the number of hours each claimed.

6. The Parties engaged in protracted, arms-length settlement negotiations over the course of several months, resulting in an agreement to resolve the matter.

7. Although Vista denies any and all liability in this matter, in the interest of resolution, and in light of the uncertainties of litigation, Vista agreed to pay Small and Cunningham each a sum that each deems a reasonable compromise of her claim, after having

been advised of their rights by experienced employment counsel. Vista also agreed to pay Small and Cunningham each an additional sum as consideration for a general release.

8. The terms of the agreement reached between the Parties were memorialized in the Settlement Agreement, which the Parties will submit directly to the Court for in-camera review.

9. Given the uncertainties of litigation, and the chance that Plaintiffs may have recovered much less, or nothing, if Vista succeeded in its defense that Plaintiffs were independent contractors, or that Plaintiffs may have recovered significantly less if Vista proved that Plaintiffs performed services for fewer hours than claimed, Plaintiffs and Vista jointly submit that the settlement reached herein is fair and reasonable. The Parties also jointly submit that there was no undue influence, overreaching, collusion, or intimidation in reaching the settlement.

10. Counsel for the Parties are available should the Court wish to conduct a hearing on this Joint Motion, but would respectfully request that the hearing be conducted telephonically so as to avoid incurring additional costs to both Parties of having Plaintiffs' counsel travel from New Jersey and Vista's counsel travel from Richmond to participate in the hearing.

WHEREFORE, for the reasons expressed herein and any that may be expressed at hearing, Plaintiffs and Vista respectfully request that this Court grant their joint motion, approve the Settlement Agreement, and dismiss this matter with prejudice.

Date: December 21, 2018

Respectfully submitted,

/s/ Nicholas R. Conlon
Nicholas R. Conlon, admitted *pro hac vice*
Jason T. Brown, admitted *pro hac vice*
JTB Law Group, LLC

/s/ Crystal L. Tyler
Crystal L. Tyler (VSB#73273)
Adam L. Lounsbury (VSB#89847)
Jackson Lewis P.C.

155 2nd Street, Suite 4
Jersey City, NJ 07302
Tel: 877.561.0000
Fax: 855.582.5297
nicholasconlon@jtblawgroup.com
jtb@jtblawgroup.com

Curtis D. Cannon (VSB#73711)
Goldberg & Finnegan, LLC
8401 Colesville Road, Suite 630
Silver Spring, MD 20910
Tel: 301.589.2999
Fax: 301.589.2644
ccannon@goldbergfinnegan.com

*Counsel for Lucinda Small and Angel
Cunningham*

701 E. Byrd Street, 17th Floor
Richmond, Virginia 23219
P.O. Box 85068
Richmond, VA 23285
Tel: 804.649.0404
Fax: 804.649.0403
crystal.tyler@jacksonlewis.com
adam.lounsbury@jacksonlewis.com

Counsel for Vista Clinical Diagnostics, LLC

CERTIFICATE OF SERVICE

I certify that on December 21, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Nicholas R. Conlon, admitted *pro hac vice*

Jason T. Brown, admitted *pro hac vice*

JTB Law Group, LLC

155 2nd Street, Suite 4

Jersey City, NJ 07302

Tel: 877.561.0000

Fax: 855.582.5297

nicholasconlon@jtblawgroup.com

jtb@jtblawgroup.com

Curtis D. Cannon

Goldberg & Finnegan, LLC

8401 Colesville Road, Suite 630

Silver Spring, MD 20910

Tel: 301.589.2999

Fax: 301.589.2644

ccannon@goldbergfinnegan.com

Counsel for Lucinda Small and Angel Cunningham

/s/

Crystal L. Tyler (VSB#73273)

JACKSON LEWIS P.C.

701 E. Byrd Street, 17th Floor

Richmond, Virginia 23219

P.O. Box 85068

Richmond, VA 23285

Tel: 804.649.0404

Fax: 804.649.0403

crystal.tyler@jacksonlewis.com

Counsel for Vista Clinical Diagnostics, LLC